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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,133	09/10/2003	John A. Boticki	JD-211-US	2132

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EXAMINER

GORMAN, DARREN W

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/605,133

Applicant(s)

BOTICKI ET AL.

Examiner

Darren W. Gorman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-16, 18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/10/2003
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 2, 2005 has been entered.

Information Disclosure Statement

2. The IDS filed November 10, 2003 is hereby acknowledged and has been placed of record. Please find attached a signed and initialed copy of the PTO 1449.

The aforementioned IDS had previously been mismatched to a different application file by the PTO because of a typographical error in the application serial number on the front page of Applicant's November 10, 2003 IDS submission. The references cited therein have now been considered by the Examiner. It was noted that the reference to Dobbs et al. (US Patent No. 5,647,539) was cited by the Examiner on the PTO-892 filed October 25, 2004. In order to avoid duplicate citation of the Dobbs reference on a patent issuing from the present application, the Examiner has lined-through the Dobbs citation on the November 10, 2003 IDS.

Minor Claim Suggestions By Examiner

3. The following change(s) are recommended to improve clarity of the claims. The claims have been examined on the merits including the suggested changes below.

In claim 20, on line 2, --a-- should be inserted between “attachment to” and “dispensing member”.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-7, 10-16, 18 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The limitation “fixed” with reference to the “at least one air passageway” as recited in claims 1, 10 and 20 is not adequately supported in the specification.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

7. Claims 1-7, 10-16, 18 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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With respect to claims 1, 10 and 20, it is unclear what the limitation “fixed” brings to the claims, since the specification gives no special definition to such term with respect to the “at least one air passageway”.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-6 and 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Tada, USPN 4,350,298.

Tada shows a combined spray and foam nozzle (see Figures 10-13) comprising: a spray nozzle head (242), a foam nozzle (260) frictionally attached via threads (256, 258) to the spray nozzle head, the foam nozzle including: a tubular member having one end portion fit over an end portion of the spray nozzle (see Figure 11), a foam producing member (261, 264) located in an opposing end portion of the tubular member, and at least one air passageway extending into the tubular member and terminating upstream from the foam producing member, the air passageway extending over a portion of the spray nozzle (see Figure 11). Tada further shows the device wherein the foam producing member is defined by a plurality of radially extending rib members (264) and includes a centrally positioned wall portion (261) with the rib members extending radially therefrom (see Figure 12), the foam producing member being positioned inwardly from the outermost end portion of the opposing end portion of the tubular member (see Figure 11). Further,

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Tada shows the device wherein the air passageway comprises a spacing between an end face (272) of the tubular member and an end face (273) of the spray nozzle and a plurality of channels (270), the channels being equidistantly spaced from each other and communicating with the spacing (see Figures 11 and 13).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tada.

Tada shows all of the claimed limitations as set forth in claims 6 and 15, and Tada further expressly states that the air passageway may take various forms and further states that the two channels members shown in Figure 13, is but one example (see column 7, lines 53-57). However, Tada is silent as to an example wherein there are four channel members.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form four channels members spaced equidistantly from each other in the device of Tada in order to induce a larger quantity of air into the tubular member for better foam generation, and since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPA 8.

Allowable Subject Matter

12. Claims 9 and 19 are allowed.

Response to Arguments

13. Applicant's arguments, as set forth in the "Remarks" section of the response filed August 2, 2005, with respect to the rejection of claims 1-7 and 10-16 as being anticipated by Tada, have been fully considered but they are not persuasive.

Regarding Applicant's first argument with respect to the Tada reference that "when the nozzle cap 260 is removed there will be no spray as only an orifice 240 is present", such an argument is not commensurate with the claim language. Further, it is unclear to the Examiner as to why Applicant believes this to be the case. Clearly there is nothing that precludes a user from using the apparatus shown by Tada as a sprayer, should the user remove the foam producing nozzle cap 260. In fact, Tada expressly states, "when the nozzle cap 260 is further rotated in the direction to displace it away from the foam dispenser body 214 and is removed, the spray liquid from the orifice 240 does not foam and the foam dispenser can be utilized as a sprayer" (see column 8, lines 30-35).

Applicant further argues that the Tada reference teaches a "screw on nozzle cap 260" such that the air passageway of Tada "would be variable", which Applicant believes is in contrast to the "fixed" air passageway as now recited in the claims. It is the Examiner's position that, though the device of Tada can be axially adjusted via the matching threads of the foam nozzle 260 and the spray nozzle head 242, wherein the end

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wall 272 of the foam nozzle 260 is moved closer to or farther away relative to the end wall 273 of the spray nozzle head 242, the position of the foam nozzle 260 when in a “foaming” position (as shown in Figure 11; and described in column 8, lines 9-30), would render what one would reasonably call a “fixed air passageway”, since the air passageway 270 would be constant in such a position. Further, because of the “friction fit” disclosed by Applicant with regard to the instant invention, it is reasonable to say that Applicant’s device is also inherently axially adjustable, since the foam nozzle 10 shown by Applicant is capable of moving axially in sliding engagement with the inner portion 23 of the spray nozzle 20, whereby portions of the air passageway would be “varied”.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Gorman whose telephone number is 571-272-4901. The examiner can normally be reached on M-F 7:30-5:00.

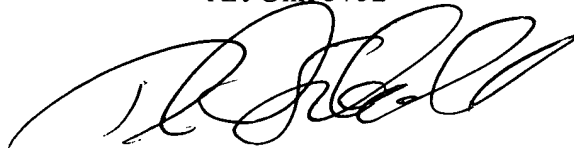
If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Dave Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DWG 8/24/05
DWG
August 26, 2005

Darren W Gorman
Examiner
Art Unit 3752



David A. Scherbel
Supervisory Patent Examiner
Group 3700